

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 23, 2010 Session

BRENDA COLE v. GOODYEAR TIRE & RUBBER COMPANY ET AL.

**Appeal from the Chancery Court for Obion County
No. 24,474 W. Michael Maloan, Chancellor**

No. W2009-02222-WC-R3-WC - Mailed March 28, 2011; Filed April 29, 2011

An employee was struck in the back of the leg by a wooden pallet while at work. She alleged that she sustained permanent injuries to her neck, back, and foot as a result of that incident and filed a complaint against her employer in chancery court for workers' compensation benefits. Her employer denied that she had sustained any permanent impairment or disability. The chancery court held that the employee sustained a compensable injury and awarded 20% permanent partial disability benefits. The employer has appealed.¹ We affirm the judgment.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Affirmed**

DONALD P. HARRIS, SR. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J., and TONY A. CHILDRESS, SP. J., joined.

W. Lewis Jenkins, Dyersburg, Tennessee, for the appellants, Goodyear Tire & Rubber Company and Liberty Mutual Insurance Company.

Jeffrey A. Garrety and Michael J. Cash, Jackson, Tennessee, for the appellee, Brenda Cole.

¹Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

MEMORANDUM OPINION

Factual and Procedural Background

Brenda Cole began working for Goodyear Tire & Rubber Company (“Goodyear”) in August 1999. She was working as a tire inspector on February 7, 2005, when she was struck on the back of her right calf by a wooden pallet being transported by a “towveyor.” She fell to the ground as a result of the blow. She immediately went to Goodyear’s on-site clinic. The record of her clinic visit states that she had two small marks on her right calf and complained of pain in that area. The abrasion was cleaned and treated with Neosporin, an adhesive bandage, and ibuprofen. Thereafter, she returned to work.

Ms. Cole returned to the clinic the next day. She reported that she had soreness in her left rib cage. An appointment was made for her to see Dr. Shah at the on-site clinic on the following day. Dr. Shah noted that Ms. Cole had left thoracic pain and mild swelling of her right ankle. He ordered x-rays of the rib cage and prescribed ibuprofen and heat packs. Ms. Cole returned to the clinic on February 10 and February 16. Her symptoms on those dates were the same as her previous visit. The clinic provided additional conservative treatment.

Ms. Cole next returned to Goodyear’s clinic on April 7, 2005, and was examined by Dr. Eason. She continued to have left thoracic pain. In addition, she stated that she experienced increased pain when she raised her right arm or twisted her trunk to the left. On April 10, she reported that her back pain was “much better” but that she had developed pain on the left side of her neck and on the top of her left hand. Dr. Eason ordered physical therapy. Dr. Eason continued to see Ms. Cole through the summer. In September, she complained of right foot pain. Dr. Eason ordered additional tests including a Magnetic Resonance Imaging (MRI) of her lumbar spine. In March 2006, Dr. Eason referred Ms. Cole to Dr. LaVerne Lovell, a neurosurgeon.

On May 19, 2008, Brenda Cole filed a complaint against Goodyear in chancery court in Obion County seeking workers’ compensation benefits for alleged injuries to her cervical spine, lumbar spine, and right leg. The chancery court held a trial on Ms. Cole’s claim on April 7, 2009.

Dr. Lovell testified by deposition. He examined Ms. Cole on March 6, 2006, and July 3, 2006. Ms. Cole told him “that about six months [after her injury], around Labor Day, she noted the onset of sciatic distribution pain that radiated down to give her numbness in the lateral aspect of the right foot.” Dr. Lovell also reviewed the MRI of her lumbar spine ordered by Dr. Eason and an electromyography (EMG) test. The EMG showed no abnormalities, but the MRI showed degenerative changes at the L4-5 level. Because Ms.

Cole's reported symptoms were in the S1 nerve distribution, Dr Lovell believed them to be unrelated to the degenerative changes shown in the MRI. He also opined that the February 7, 2005 incident was unlikely to be the cause of her symptoms because the area of her leg that was struck did not involve any branches of the S1 nerve route. He did not believe that Ms. Cole had any permanent impairment and placed no restrictions on her activities.

Dr. Apurva Dalal, an orthopaedic surgeon, performed an independent medical evaluation at the request of Ms. Cole's attorney. Dr. Dalal noted "tenderness in the lower cervical spine with paraspinal muscle spasms." He also noted paraspinal muscle spasms on his examination of Ms. Cole's lower lumbar spine. He observed that Ms. Cole had a loss of sensation on the lateral aspect of the right leg, in the fourth and fifth toes, and in the web space between the fourth and fifth toes dorsally. Dr. Dalal diagnosed Ms. Cole as having a lumbosacral strain, a cervical strain, and indicated "status post-contusion right leg with numbness in the right foot." He explained that "the sprains and strains – what we call a sprain . . . is actually a torn ligament. And torn ligaments sometimes don't heal on [their] own and become a permanent problem." In his opinion, all three conditions were caused by the February 7, 2005 event. He assigned Ms. Cole a 5% anatomical impairment to the body as a whole for each condition, a total of 15% impairment to the body as a whole. He recommended that Ms. Cole "avoid prolonged walking, standing, stooping, squatting and bending . . . overhead work and work away from the body. She should not lift more than thirty pounds of weight."

Ms. Cole was fifty-six years old at the time of trial. She was a high school graduate with no additional education or specialized training. Prior to being hired by Goodyear, she held various jobs in the textile industry. She had several different jobs for Goodyear. She did not miss any time from work as a result of her injury, and she continued to work in the same job at the time of the trial. She testified that she had back pain approximately two days per week, that her neck often ached and became stiff, and that she had pain in her right foot daily. Her right foot sometimes became stiff and swollen.

The trial court took the case under advisement. It issued its ruling by letter to counsel, which is not in the record. The trial court found that Ms. Cole had sustained injuries to her foot, back, and neck as a result of the February 7, 2005 event and awarded 15% permanent partial disability to the body as a whole. Goodyear subsequently filed a motion requesting specific findings of fact pursuant to Rule 52 of the Tennessee Rules of Civil Procedure. The court granted the motion and adopted proposed findings submitted by Ms. Cole. Goodyear appealed, asserting that the trial court erred by finding that Ms. Cole sustained a permanent impairment as a result of her work injury.

Standard of Review

The standard of review of findings of fact is “de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of evidence is otherwise.” Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight of given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness’ demeanor and to hear in-court testimony. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); Elmore v. Travelers Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992).

Analysis

Goodyear contends that the testimony of Dr. Dalal is insufficient to support a finding of causation. Goodyear notes that Dr. Dalal conceded that the degenerative conditions in Ms. Cole’s neck and back existed prior to the work injury. Goodyear argues that Dr. Dalal did not specify how the work injury advanced or aggravated Ms. Cole’s degenerative conditions but merely attributed subsequent “pain and symptoms” to the work injury. Goodyear argues that this testimony places the case in line with Cunningham v. Goodyear Tire & Rubber Co., 811 S.W.2d 888, 890 (Tenn. 1991), in which the Court held that a mere increase in symptoms is not compensable. In response, Ms. Cole points out that there is no evidence that any of her degenerative conditions were symptomatic prior to the February 2005 event.

Goodyear also argues that the testimony of Dr. Lovell is more compelling than that of Dr. Dalal in light of Dr. Lovell’s explanation that Ms. Cole’s symptoms did not appear to match Dr. Lovell’s objective findings. Goodyear also points out that Ms. Cole’s low back and right foot symptoms did not arise until September 2005, approximately six months after the event. Dr. Dalal testified that there is a sural nerve in the calf which goes down to the fourth and fifth toe, and he opined that a contusion of that nerve in the calf could reasonably have resulted in the numbness experienced by Ms. Cole. Dr. Dalal testified that a time lag between an injury and the onset of symptoms may occur. According to Dr. Dalal’s testimony, an injured person will sometimes focus on the most acute injury and not realize another injury until the former subsides. In other situations, Dr. Dalal testified, a patient sometimes experiences but fails to report a condition she thinks will go away and later reports the condition when it continues.

We have examined the medical evidence de novo, without any presumption of correctness of the trial court's findings. Bohanan, 136 S.W.3d at 624. We cannot say that the evidence, taken as a whole, compels the conclusion reached by the trial court. In our view, reasonable minds could arrive at differing conclusions based on the evidence in the record. The trial court was required, as are we, to resolve all reasonable doubts as to the causation of an injury and whether the injury arose out of the employment in favor of the employee. Phillips v. A. & H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004). A finding that a workplace event caused an injury cannot be based on proof that is speculative, conjectural, or uncertain, Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004). However, "absolute medical certainty is not required to establish causation." White v. Wertham Indus., 824 S.W.2d 158, 159 (Tenn. 1992). We have determined based on the testimony of Dr. Dalal that Ms. Cole's injuries reasonably could have been caused by the February 7, 2005 work accident, and we therefore hold that the evidence does not preponderate against the trial court's finding that the work injury was the cause of the permanent injuries to Ms. Cole's neck, back, and leg.

Conclusion

We affirm the judgment of the chancery court. Costs are taxed to the appellant, Goodyear Tire & Rubber Company, and its surety, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellant, Goodyear Tire & Rubber Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM